SCBA

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

DEC 27 1994

December 19, 1994

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Ref: MM Docket Nos. 92-266, 93-215
Sixth Order on Reconsideration, FCC 94-286 (Released November 18, 1994)

Dear Mr. Caton:

On December 7, 1994, I sent the attached letter to Chairman Reed Hundt regarding the "Going Forward Rules" released in FCC 94-286 on November 18, 1994. I subsequently sent the attached letter dated December 14, 1994 to the Chief of the Cable Services Bureau on the same subject. I hereby petition for leave to file these documents after the deadline for comments in this rulemaking and request that the two documents be made part of the record therein.

In addition, on December 13, I discussed this same subject with the Chief of the Cable Services Bureau in response to a telephone call from that office. This disclosure is submitted under 47 C.F.R. sec. 1.1206.

Sincerely,

David D. Kinley

David D. Kinley
Chairman

cc: Susan Cosentino
Eric Breisach

No. of Copies rec'd 0
List A B C D E

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

December 7, 1994

Mr. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, DC 20554

Re: The "Going Forward" Rules for Small System Operators

Dear Chairman Hundt:

On behalf of SCBA's 374 member companies nationwide, I am writing to express the Association's strong disagreement with the Commission's rules in the Sixth Order on Reconsideration in MM Docket Nos. 92-266 and 93-215, FCC 94-286, released November 18, 1994. As with past Commission actions, the "Going Forward" rules create a significant disparity for small systems. Far from providing the much-advertised incentives for adding channels, these rules do nothing of the sort for small systems.

Largely in response to the efforts of CATA and Steve Effros' letter of November 23, there is widespread recognition at the Commission that these rules as applied to small systems are a serious mistake. Commissioner Ness went so far as to say in a speech at the Western Show last week that the FCC "dropped the ball" in these rules when it came to small systems.

What is just as disturbing is that these rules continue the pattern of not just disagreeing with analyses of small system concerns, but ignoring them. This pattern has now apparently become a *policy of conscious disregard* of the impact of your rules on small system operators. It has already required SCBA to undertake expensive litigation against the FCC in the U. S. Court of Appeals. In fact, with reference to the FCC's obligations under the Small Business Act, the Commission's conscious disregard was so egregious that it triggered unprecedented intervention by a sister agency (see letter to you from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, dated July 28, 1994: "Due to the burdens that the [FCC's] regulations impose on small cable operators, the Office of Advocacy is considering the filing of an amicus brief in support of SCBA's intervention in the D.C. Circuit.")

The apparent *policy of conscious disregard* has likewise triggered unprecedented response from Capitol Hill. In a letter dated July 21, 1994, sixteen Senators, fully half the membership of the Senate Small Business Committee, including the new Chairman of the Senate Commerce Committee, urged SBA to intervene against your agency in SCBA's court appeal. Then in a letter to you on September 29, the Congressional Rural Caucus was openly critical of the FCC's treatment of small system operators. The letter urged you and the other commissioners "to ensure that small and rural cable operators are not unduly burdened" by the FCC's rate regulations. In an historic high for support, sixty-five members of Congress signed the letter. To our knowledge, this letter from 15% of the House of Representatives remains unanswered.

The interaction between SCBA and the Commission leading up to the Going Forward rules is but the latest example of the apparent *policy of conscious disregard*. The Commission recognized that small systems have a high per subscriber cost for headend equipment because that cost is fixed, regardless of the number of customers served by a headend. The Commission proposed an addition to the rate based on the cost of headend equipment. In October, members of the Cable Services Bureau staff contacted us asking for reaction to the proposed "relief." We were told that the order in the Going Forward rulemaking was to be issued in a matter of days.

We quickly prepared and faxed to the Bureau our analysis. In the analysis, SCBA raised four principal concerns:

1. in order to create parity between small systems and large, the additional cost of headend equipment must be added to the incentives given larger systems (i.e. added to the $.20 per channel) rather than offered in place of it, because larger systems can and will earn incremental margin using the $.20 amount, while small systems with higher costs per subscriber will only be allowed to recover the equipment costs

2. our computations showed that the headend cost "add-on" was typically less than $.20 and that operators of systems with more than 350 subscribers would be foolish to choose the small system option

3. the headend cost recovery should be available to systems with more than 1,000 subscribers because the per subscriber cost remains high for those systems

4. no "subscriber cap" on the headend cost "add-on" was necessary because the calculation was self limiting (i.e., it quickly decreased to less than one cent per subscriber as the number of subscribers per headend increased).

We then reviewed this analysis in detail with the staff in a conference call.

When the <u>Sixth Order On Reconsideration</u> was released, we discovered the Commission had made no changes from its original proposal. In fact, none of the concerns in our analysis were even mentioned, let alone discussed.

As a result, the Going Forward rules enable larger systems to recover their costs and earn additional margin by adding channels to regulated tiers, since headend costs are less than one cent per subscriber for systems with 6,000 or more subscribers. On the other hand, small systems are either prohibited from recovering their headend costs altogether or can elect to recover them with a profit of 11.25% on the hardware, but lose the $.20 per channel, which enables larger systems to recover all their costs, both hardware and programming, and still maintain a mark-up.

We urge the Commission to reconsider this aspect of the Going Forward rules on its own motion. The staff of some Commissioners has indicated they intend to do that. Other staff members insist, however, that a petition for reconsideration must be filed.

In view of the apparent *policy of conscious disregard* discussed above, we doubt that the Commission will take any action on its own initiative. In any event, the deadline for filing a petition for reconsideration in this matter is December 19. We stand ready to work cooperatively with the Commission between now and then to resolve this obvious problem in the Going Forward rules. But the issues detailed in October and ignored in November must be formally considered by the Commission. The only avenue for assuring such consideration is the filing of a petition.

The Commission already has more than sufficient data, from both CATA and SCBA, to act on its own to correct an obvious problem. However, if the apparent *policy of conscious disregard* continues to apply, then SCBA will be forced, once again, to expend time and money to submit its analysis on December 19.

Sincerely,

David D. Kinley

David D. Kinley
Chairman

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Meredith Jones
Blair Levin

Small Cable Business Association
c/o Kinley Simpson Associates
7901 Stoneridge Drive Suite 404 Pleasanton, CA 94588
Phone (510) 463-0404 FAX (510) 463-9627

December 14, 1994

Ms. Meredith Jones
Chief, Cable Services Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Going Forward Rules–Small Systems

Dear Meredith:

Thank you for calling yesterday to discuss the "going forward" rules for small systems. Attached is a letter on this same subject which Eric Breisach has sent to Susan Cosentino at her request.

Eric's letter includes the chart we submitted at Susan's request in October, together with a new chart, which uses a 15-year depreciable life for the headend equipment instead of the seven-year life used in the October chart.

As you can see from the chart labeled "December 1994," the monthly subscriber cost attributable to the "headend add-on" would be:

System Size	Monthly Subscriber Add-On
750 subscribers	7 cents
1,000 subscribers	5 cents
1,500 subscribers	3 cents
4,000-10,000 subscribers	1 cent
11,000 subscribers and higher	0 cents

This chart illustrates two points which you and I were discussing. First, the "headend add-on" should not be limited to systems of fewer than 1,000 subscribers. The system of 1,500 subscribers needs to be able to recover that incremental three cents just as much as the system with 999 subscribers needs to recover the incremental nickel. Second, there is no need to "cap" the application of the add-on, because the calculation is "self-limiting." The add-on <u>per subscriber</u> quickly declines to a penny for systems with 4,000 subscribers. For systems of 11,000 and higher, it is <u>zero</u>. Therefore, systems of that size

Ms. Meredith Jones
Going Forward Rules-Small Systems
December 14, 1994
Page Two

would not be entitled to any "headend add-on," and their allowable increase would be limited to 20 cents per subscriber per channel.

I hope these charts illustrate that you can safely treat the headend costs as an add-on, instead of an alternative, to the 20 cents per channel.

Please call if you need any further information about this.

Sincerely,

Dave

David D. Kinley
Chairman

cc: Blair Levin
Mary McManus

HOWARD & HOWARD

ATTORNEYS
Established 1869

The Pinehurst Office Center, Suite 101
1400 North Woodward Avenue
Bloomfield Hills, Michigan 48304 2856
Telephone (810) 645-1483
Fax (810) 645-1568

The Kalamazoo Building, Suite 400
107 West Michigan Avenue
Kalamazoo, Michigan 49007-3956
Telephone (616) 382-1483
Fax (616) 382-1568

The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817
Telephone (517) 485-1483
Fax (517) 485-1568

The Commerce Building, Suite 200
321 Liberty Street
Peoria, Illinois 61602-1403
Telephone (309) 672-1483
Fax (309) 672-1568

Kalamazoo Office
December 12, 1994

Direct Dial (616) 382-9711

VIA FACSIMILE

Ms. Susan Cosantino
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington, DC 20554

Re: Going Forward Rules; Resubmission of Small System Headend Add-Ons

Dear Susan:

In response to your request on Friday, we are resubmitting the computation we provided you in October. This computation assumes that operators have paid the full $5,000 for headend equipment to add one channel. For illustrative purposes a 7 year depreciable life was used. In light of recent Commission decisions, a 10 to 15 year life may be more appropriate. This change, however, would serve to <u>decrease</u> the total pass-through. Therefore, if anything, we have <u>overstated</u> the amount of the pass-through.

To illustrate this fact, we have enclosed a revised chart which shows the impact if the 15 year recovery period is required for headend equipment. In such a circumstance, a system must have 250 or fewer subscribers before it will exceed the cost pass-through of $0.20. We have also added two additional columns which indicate both the amount of the actual up-front investment that cable operators must make on a per subscriber basis as well as the number of years required to recover the original investment <u>ignoring the time value</u>

of money and other cost of capital considerations. As expected, the investment per subscriber can be huge (a minimum of $5.00 per subscriber for a 1,000 subscriber system) with a recovery period in excess of 8 years. As evidenced by these computations, there is simply no incentive for a small system to add additional channels of programming under the going-forward rules.

To make the going forward rules work for small systems, the Commission needs to make all of the following changes:

1. The headend cost pass-through must be added to the $0.20 per channel allowed operators in general. As the attached chart indicates, only the smallest systems will ever have an average headend cost pass through that even equals $0.20. Without this fundamental change, the headend cost pass-through is meaningless for most operators.

2. Headend costs on a per subscriber basis are a problem for systems with more than 1,000 subscribers. As the chart shows, the costs are still significant for two and three thousand subscriber systems. While we appreciate the Commission's desire to limit relief to only those systems needing it, the computation itself is self-limiting. As the chart shows, the computations reduce quickly to $0.01 per subscriber as system size rises, and eventually round to zero. Restricting it to systems with 1,000 or fewer subscribers owned by small MSOs too narrowly limits relief.

We are grateful that the Commission is revisiting this issue and will provide you with additional information and input as requested.

Very truly yours,

HOWARD & HOWARD

Eric E. Breisach

Enclosure
cc: David Kinley
\361\fcc\susan.d12

Self Limiting Nature Of Headend Expense Computation
(Highest Possible Average-Year Add On)
Going-Forward Rules
**** Revised Depreciable Life ****
Small Cable Business Association
December 1994

		FCC Going-Forward Rules					Actual Up-Front Investment Per Subscriber	
		Monthly	Average Cost of	Total Monthly	Monthly Subscriber Cost			
System Size	Headend Cost	Depr (15 yr)	Capital (11.25%)	Cost	Acutal	Rounded	Amount	Years To Recover
250	5,000	27.78	23.44	51.22	0.204861	0.20	20.00	8.14
500	5,000	27.78	23.44	51.22	0.102431	0.10	10.00	8.14
750	5,000	27.78	23.44	51.22	0.068287	0.07	6.67	8.14
1,000	5,000	27.78	23.44	51.22	0.051216	0.05	5.00	8.14
1,500	5,000	27.78	23.44	51.22	0.034144	0.03	3.33	8.14
2,000	5,000	27.78	23.44	51.22	0.025608	0.03	2.50	8.14
3,000	5,000	27.78	23.44	51.22	0.017072	0.02	1.67	8.14
4,000	5,000	27.78	23.44	51.22	0.012804	0.01	1.25	8.14
5,000	5,000	27.78	23.44	51.22	0.010243	0.01	1.00	8.14
6,000	5,000	27.78	23.44	51.22	0.008536	0.01	0.83	8.14
7,000	5,000	27.78	23.44	51.22	0.007316	0.01	0.71	8.14
8,000	5,000	27.78	23.44	51.22	0.006402	0.01	0.63	8.14
9,000	5,000	27.78	23.44	51.22	0.005691	0.01	0.56	8.14
10,000	5,000	27.78	23.44	51.22	0.005122	0.01	0.50	8.14
11,000	5,000	27.78	23.44	51.22	0.004656	0.00	0.45	N/A
12,000	5,000	27.78	23.44	51.22	0.004268	0.00	0.42	N/A
13,000	5,000	27.78	23.44	51.22	0.003940	0.00	0.38	N/A
14,000	5,000	27.78	23.44	51.22	0.003658	0.00	0.36	N/A
15,000	5,000	27.78	23.44	51.22	0.003414	0.00	0.33	N/A
16,000	5,000	27.78	23.44	51.22	0.003201	0.00	0.31	N/A
17,000	5,000	27.78	23.44	51.22	0.003013	0.00	0.29	N/A
18,000	5,000	27.78	23.44	51.22	0.002845	0.00	0.28	N/A
19,000	5,000	27.78	23.44	51.22	0.002696	0.00	0.26	N/A
20,000	5,000	27.78	23.44	51.22	0.002561	0.00	0.25	N/A

Note: The "Years to Recover" represents the number of years necessary to recover the initial cash outlay to add a channel of programming using a pass-through calculation which averages the amount of the pass through over time. This computation does not include any compensation for the time value of money or other cost of capital considerations. Inclusion of any such items would substantially increase the recovery period.

Self Limiting Nature Of Headend Expense Computation
(Highest Possible Average-Year Add On)
Potential Going-Forward Rules
Small Cable Business Association
October 1994

System Size	Headend Cost	Monthly Depr (7 yr)	Average Cost of Capital (11.25%)	Total Monthly Cost	Monthly Subscriber Cost	
					Acutal	Rounded
500	5,000	59.52	23.44	82.96	0.165923	0.17
1,000	5,000	59.52	23.44	82.96	0.082961	0.08
1,500	5,000	59.52	23.44	82.96	0.055308	0.06
2,000	5,000	59.52	23.44	82.96	0.041481	0.04
3,000	5,000	59.52	23.44	82.96	0.027654	0.03
4,000	5,000	59.52	23.44	82.96	0.020740	0.02
5,000	5,000	59.52	23.44	82.96	0.016592	0.02
6,000	5,000	59.52	23.44	82.96	0.013827	0.01
7,000	5,000	59.52	23.44	82.96	0.011852	0.01
8,000	5,000	59.52	23.44	82.96	0.010370	0.01
9,000	5,000	59.52	23.44	82.96	0.009218	0.01
10,000	5,000	59.52	23.44	82.96	0.008296	0.01
11,000	5,000	59.52	23.44	82.96	0.007542	0.01
12,000	5,000	59.52	23.44	82.96	0.006913	0.01
13,000	5,000	59.52	23.44	82.96	0.006382	0.01
14,000	5,000	59.52	23.44	82.96	0.005926	0.01
15,000	5,000	59.52	23.44	82.96	0.005531	0.01
16,000	5,000	59.52	23.44	82.96	0.005185	0.01
17,000	5,000	59.52	23.44	82.96	0.004880	0.00
18,000	5,000	59.52	23.44	82.96	0.004609	0.00
19,000	5,000	59.52	23.44	82.96	0.004366	0.00
20,000	5,000	59.52	23.44	82.96	0.004148	0.00